MESSAGE FROM THE LOK SABHA

The Equal Remuneration (Amendment) Bill, 1987

SECRETARY-GENERAL: Sir, I have to report to the House the following message received from the. Lok Sabha signed by the Secretary-General of the Lok Sabha:

"In accordance with the provisions of rule 120 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to inform you that Lok Sabha, at its sitting held on the 9th December, 1987, agreed without any amendment to the Equal Remuneration (Amendment) Bill, 1987, which was passed by Rajya Sabha at its sitting held on the 24th November, 1987.

SHRI H. HANUMANTHAPPA (Kar-p. ataka); Sir, the Government has laid the report on the Fairfax. Certain important matters have been revealed. Even security in the country has been violated. I would like....

MR. CHAIRMAN: You see, there are ways to raise an issue. You come to me and discuss.

SHRI H. HANUMANTHAPPA: **

SHRI PAWAN KUMAR BANSAL (Punjab): **

MR. CHAIRMAN: I am not permit-ling anybody.

श्री राम अवधेश सिंह (बिहार) :**

श्री सत्यपाल मलिक (उत्तर प्रदेश):**

सभापति : कोई रिकार्ड पर नहीं जा रहा है... (व्यवधान) आपका भी रिकार्ड पर नहीं जायेगा । आपको इजाजत नहीं दी है ।

[उपसभापति महोदया पीठासीन हुई ।]

उपसभापति : राम अवधेश जी बाद में थोड़ी देर के बाद समय दे दूंगी ।

**Not recorded.

श्री सत्य प्रकाश मालवीय (उत्तर प्रदेश) : महोदया, आज की कार्यसूची आप देख लीजिए । विधान कार्य में एक प्रस्ताव है विधेयक लौटाये जाने के लिए तथा प्रस्तुत करने लिए, क्या यह नहीं होगा । इनके पहले है ।

THE DEPUTY CHAIRMAN: Mr. Sangma is not here. He has requeste. i that it may be taken up at a later stage

THE HIGH COURT JUDGES (CONDITION OF SERVICE) AMENDMENT[1] BILL, 1987—*cd, id.*

THE MINISTER OF PLANNING, THE MINISTER OF PROGRAMME IMPLEMENTATION AND THE MINISTER OF LAW AND JUSTICE (SHRI P. SHIV SHANKER): Yesterday, while replying to the debate, I had referred about the vacancies and filling up thereof. Then I referred about the concept of transfer of judges. I was referring to the charges of judicial decision being influenced; I would slightly come to this aspect at a later stage because 1 was having a different flow when I speaking. I will straightway go to the issue that has been raised about my speech particularly by two hon. Members—Mr. Upendra and Mr. Gurupadaswamy.

श्री राम अवधेश सिंह (बिहार) : आप मेरा क्या जवाब नहीं देंगे ?

SHRI P. SHIV SHANKER: I will answer the rest after I cover this issue.

Madam, I would like to explain at the outset that I was speaking at a seminar and the subject that was involved was "The Accountability of the Legislature, Executive and the Judiciary under the Constitution. " The seminar Was to discuss threadbare this particular subject. T wa-=; one of the keynote addressers in that conference. I had dictated my speech and what had happened was that some hon. Members who have read some portions of it, 1 would submit have torn my expressions out of context. It is better that I should set the record straight and explain what exactly...

SOME HON. MEMBERS: Now you read certain portions.

SHRI P. SHIV SHANKER: I will certainly read out certain portions, because, the objectionable portion which has been referred to is a conclusion after laying of the foundation and for the purpose of that conclusion it has become abosolutely necessary to explain. If the Deputy Chairman permits me to lay it on the Table of the House after I have read it, I will do so. I have no objection.

SHRI ATAL BIHARI VAJPAYEE (Madhya Pradesh): Is it not correct that your speech has been published verbatim by •"Newstime"?

SHRI P. SHIV SHANKER: I did not come across whether it has been published verbatim. But since the quotations are being read out of context, that is why I have to explain. I must be given an opportunity to explain so that there is no misunderstanding left.

Firstly, I was developing the theory of accountability—accountability to whom? One of the hon. Members said that accountability to the Constitution—of course, subject to what he would like to say—I understand it as accountability to the ideology that is enshrined in the constitution.

In my submission I will put a slightly different perception. I developed the theme accountability is to the Sovereign of this country. All these institutions art meant for the Sovereign. That is the subject which I was developing. Then the question was who is the 'sovereign?

SHRI SATYA PRAKASH MALA-*VIYA (War Pradesh): We the people of India.

SHRI M. S. GURU PAD ASWAMY CKarnataka): Legal sovereign. Not political.

SHRI P. SHIV SHANKER: I will ex plain it in my own way. Now, my ap' proach was the sovereign would mean the common man who is in majority in this country. This is the thesis that I devslo-Ped and I would like to read one or two paragraphs in that regard and then straightway go to the judicial accountability.

I would not like to read the whole thing but I will read only some portions.

"Democratic theory provides that since power emanates from the people and is to be exercised in trust for the peo ple by the Government, each centre of po wer must be accountable to the body that parted with its power. The Constitution of India, at the outset, clearly defines the origin of power and the ultimate reposi tory thereof. Some authors on the Con stitution have said that the power to frame our Constitution was derived from the Indian Independence Act, 1947. That in my view, seems to be an understate ment. The Indian Independence Act came to De passed because of protracted struggle for freedom from tht British Rule. It is only the legal form which necessi tated passing of the Indian Independence Act. But when the Constitution pro claims, "We, the People of India, " there should be no lurking doubt that the *P60'* pie were the repository of power. By delegating that power, the people enabled the Constituent Assembly to frame the Constitution and that delegated power was distributed in various limbs and cen tres of power created by the Constitution for the proper governance of the coun try. This was also recognised by the Supreme Court in Gopalan's case which I cited. I would not like to read that. If the people of India were the reposi tory of power and parted with it in favour of the delegates, obviously, the delegates must be accountable to the principal for the exercise of that power. Therein lies the gecm of accountability-Accountability, sometimes is understood to be as a social audit of actions taken in exercise of power. The social audit may take different forms, but in order to provide that the power is utilised for the purpose for which it is confer-red, the grant of power must be accompanied by the charter of accountability. That is the only way how the rule of law can be 'served and preserved. It is trite saying that power without accountability is tyranny and accountability unaccompanied by power is pusilanimous. In the broader sense, accountability is the central objective of the democratic Government. The best method is to

find out how control can be exercised over those on whom power is delegated. It is in essence the doctrine of accounta bility meaning thereby that one who enjoys the power is responsible to some one for explaining his action in exercise of power and becomes answerable. It also ift-heres the principle of trust. If people enjoy the power to provide for its gov ernance and parted with it in favour of the delegates or the centres of power crea ted by the Constitution enacted by it obviously the people can always ask the delegates to explain how the power is exercised for the best and total advantage of people. Now after that I proceed ed with a$_s$ to how the Executive and the Legislature are accountable. That I will avoid because that may not be necessary. Tt will take a lot of time if I go on reading the whole thing.

Then I proceeded to deal with the judicial accountability. This was a paper, a trendsetter because there were three persons, one was from the Legislature, the Speaker, the second was from the judiciary one of the judges of the High Court, and I was drafted from the Executive and each on$_e$ of us had to read the keynote pape$_r$ which was to be discussed in the seminar. I am just reading those portions which are relevant because they would make the perspective absolutely clear. At page 15 of my speech, I mentioned, our society befbre{ independence was indisputably an unjust society, wholly founded by exploitation by men against men. The colonial master$_s$ per-petrated this exploitation in the hope that it would be a great device and the exploiter 'and the exploited would never unite to effectively raise the banner ot revolt. The legal system was so devised by the imperial rulers so as to be an outfit to perpetuate injustice.. Anotole France pithily described the situation when he said, "So long as the society is founded on injustice, the functioning of the laws will be to defend and sustain injustice and the more unjust they are the more respectable they will seem. It is such a legal system that came to rule us but the Constituent Assembly which was to frame the Constitution for the free India articulated the goals of the Constitntion on the objective resolution moved on December, 13, 1946. Amongst others, it guaranteed to all the people of India, Justice, social, economic and political; equality of $_s$tatus, equal opportunity bo-fore law and $_s$o on. It is to achieve these-objectives that the judicial system of free India was to be evolved and dedicated. After referring to the pre-indepen-den$_t$ era, I. am proceeding chronologically with reference to the developments that have taken place. Before I go into the details as to in what manner the judicial system has accounted itself to the people of. India for achieving the diverse objectives set in the Constitution in bringing an egalitarian system in the country, it is desirable to go into a little background of the judicial working in the democratic set up governed by a written Constitution but I will avoid that because it would be unnecessary *to 8°* into that because I dealt with the American Constitution and so on. It will take quite a lot of time.

SHRI ALADI ARUNA *alias* V. ARU-NACHALAM (Tamil Nadu): Kindly explain how to make the court accountable?

SHRI P. SHIV SHANKER: That query, you have put.

SHRI ALADI ARUNA *alias* V. ARU-NACHALAM: You are dealing with the necessity of accountability. What is your proposal? To make the court accountable to whom and why?

SHRI P. SHIV SHANKER; After I read, I will explain the points. Could vou kindly wait?

> "Needless to say that iudiciarv i$_s$ the vital centre of power. In fact, it has been often said that the Indian Supreme Court is probably the most powerful court... "

I would like to tell the hon. Members that in certain respects, maybe, some of mv friends might feel a little unhappy. I have not spared the working of my party also.

SHRI ALADI ARUNA *alias* V. ARU-NfACHALAM: That i$_s$ different.

SHRI P. SHIV SHANKER; Will you kindly wait? Let me read and then, afterwards, if you have any point, I am prepared to answer.

[Shri P. Shiv Shanker. J

"In fact it has been often said that the Indian Supreme Court is the most powerful court in the world. The power of judicial review is composed of three important factors; (a) The power of judiciary to interpret parliamentary legislation, to give the meaning to the words used in a statute and to fill in the gaps; (b) the judicial power to declare a s[tat]ute unconstitutional and (c) the power of the Courts to invalidate even the constitutional amendment.

Viewing the Supreme Court of India from the standpoint of accountability, a review of its role is depressing. Both Mahatma Gandhi and Pandit Jawahar-lal Nehru said that political democracy was the means to an end for removing poverty, ignorance, social stratification, c economic exploitation and inequality iu the society; the basic philosophy, reflected in Part IV of the Constitution. Mahatma Gandhi said that Parliament will have to enact continuously Jaws after laws, for amelioration of the conditions of the rural poor and the injustice ridden masses of India and it must be confessed that the Government at the outset, started in right earnest. "

This is a reflection on the Government itself.

"Abolition of Zamindari was assigned the top priority because 80 per cent of rural population stood dependent on agriculture as the only avocation. Zamindar$_s$ under permanent settlement by the imperial rulers aggrandised large agricultural estates. Contrived ownership of land was required to be eliminated. To liquidate their hold, Zamindari had to be abolished so as to make the tiller the owner of the land and bring him in direct contact with the State removing all intermediaries. A provision was made for some token compensation to be paid to the Zamindar$_s$ which, in fact, does not seem to me to be a correct approach, but Articles 19(1) (f) and 31 made right to property a fundamental right. The Supreme Court composed of the element from the upper elite class had their unconcealed sympathy for the haves i. e. the Zamindars.

I am referring to that period when they were concerned with *Kameshwar Singh* case and so on and so forth.

As a result, they interpreted the word '•compensation" in Article 31 contrary to the spirit and the intendment of the Constitution and ruled that compensation must represent the price which a willing seller is prepared to accept from a willing buyer. The entire programme of Zamindari abolition suffered a set-back. The Constitution had to be amended by the first, 14th and the 17th amendments to remove this oligarchic approach of the Supreme Court with little or no help. Ultimately, this rigid reactionary and traditional outlook of the property, led to the abolition of property as a fundamental: right. Twenty years of valuable time was lost in this confrontation presented by the judiciary in introducing and: implementing basic agrarian reforms for removal of property. What is the ultimate result? Meanwhile, even the political will seems to have given way and the resultant effect is the improper and ineffective implementation of the land reform laws by the executive and the judiciary supplementing and complementing each other.

I have attacked my party itself and perhaps, of course, vertain opposition parties.

"The history of amendment of Article 368 is a history of contemporary fight for supremacy under the Indian constitution. Without so saying, the judiciary claims to be supreme. The power to declare Constitutional amendments, legislative enactments and administrative action *ultra vires* and invalidate them is of such a comprehensive nature that, if not wisely exercised, it will put the whole mechanism of Constitutional checks and balances out of gear. The power to issue writs under Articles 32 and 226 of the Constitution is of widest amplitude. It is controlled, if at all it can be said, *by*

the self-imposed restraint; rational approach, wisdom and national good; all of which are weak constraints over such extensive power. Without going into the historical perspective of the concept of the judicial review of legislative action,...

how far it moved by 1967 can be ascertained by reference to the decision in Golaknath's case decided by a bare majority of one judge, 6: 5, that Parliament •was denied the power to amend any of the fundamental rights in tht Constitution. In other words, if the fundamental rights are referable to some basic human rights and some value judgments, those of 1946—49 vintage, they would remain unaltered for thousands of years. This is to give you an idea of the tremendous power enjoyed by the judiciary. It overlooks the difference in the outlook of people's representatives, elected directly by the people every five years, reflecting jiew and emerging expectations, hopes and aspirations, and the irremovable old judiciary. Maharajas and Rajas were anachronistic in independent India. They had to be removed and yet the conservative elements in the ruling party gave them privy purses. When the privy purses were abolished, the Supreme Court, contrary to the whole national upsurge •and thinking, held in favour of the Maharajas Mathadhipatis like Keshavanand and zamindars like Golaknath evoked a sympathetic chord nowhere in the whole country except in the Supreme Court of India and the bank magnates, the representatives of the elitist culture of this country, ably supported by industiialists, the beneficiaries of independence, got higher compensation by the intervention of the Supreme Court in Cooper's case. My submission is this. After dealing with the Zamindari Abolition laws, etc., then going into the Golaknath's case, then going into the Privy Purses' case and then later on moving on to Keshavananda Bharati and so on, it is there I said this is the conclusion in my submission of that period right up to 1973. What I said was—I am going to explain—these anti-social elements—those which have been read—that is, the smugglers, the FERA violators, bride-burners, a horde of reactionaries, have found their haven in the Supreme Court. What 1 would like to submit is this. This is a conclusion with reference to the haven. It is a research paper one prepares for the purpose of discussion at a seminar and one puts down one's views. I had put down my views, not necessarily as a* Minister. It is incidental that I also happen to be Law Minister. The views are put down on a paper before a seminar for the purpose of throwing it open fo$_r$ discussion. And there I would like to submit that this j$_s$ what I said. What is it that is objectionable so far as these expressions are concerned? (*/«-terrupiion)* That is why I thought 1 should read the whole thing. I would like to tell you one aspect. Supposing I were to say, I am putting it in a different form—I will tell you later why these words have been used—anti-social elements, smugglers, FERA violators, bride-burners, a horde of reactionaries!, have sought relief from the Supreme Court. Would you have found fault with me?...

SHRI ALADI ARUNA *alios* V. ARUNACHALAM; It is due to the loopholes and defects in our law, not the whims and fancies of the Supreme Court. We are making laws with loopholes and defects and if someone escapes, how can you blame the Supreme Court? Why do you blame the Supreme Court? You speak of land reforms. You are not at all implementing them. Our State Government had passed a law for land reform$_s$ but it i$_s$ blocked here at the Centre. Who is responsible for such impediments. Can you explain?

SHRI P. SHIV SHANKER; You had your say. Why do you interrupt me? Don't go on interrupting me everytime. I am explaining my stand. T am here to explain my stand.

The point is Golaknath's case itself has been over ruled by Keshavananda Bharati. It is a auestion of interpretation of the Constitution by virtue of the amendment that has taken place, by the amending power that is there under Article 368. After dealing with that, the point that i I am trying *to* make is this. When I

referred to "a whole horde of reactionaries'". I would like to ask; zamindars, people who benefited by Golaknath's case, people who benefited by Cooper's case, with reference to bank nationalisation, people who benefited on the question of Privy Purses—are they not reactionaries? I call them reactionaries and therefore, 1 say "a whole horde of reactionaries", and I do have cases of the Supreme Court to cite. If you like to think of smugglers, FERA violators, brideburners, I can cite cases. So, where is the untruth that I am speaking?

श्री चतुरानन मिश्र (बिहार) : अगर मंत्री जी इजाजत दें तो एक बात पूछना चाहता हूं। यह सब तो बहुत अच्छी अच्छी बात हो रही है, लेकिन एमेनेस्टी जब आप ग्रान्ट करते हैं जिन लोगों ने सारे देश का गला काटा उनको तो वह किस कानून में करते हैं ? और इसमें एक बात आपने नहीं कही कि सरकारी स्तर से और राज्य के स्तर से जो सारे काम किये जा रहे हैं, अगर आप दोनों का कंबाइन्ड कर दें तो बात समझ में आती है।

श्री पी० शिवशंकर : मेरा निवेदन है कि इतना निवेदन करने के बाद कल मेरे मित्र श्री गुरुपादस्वामी जी ने भी यही टापिक उठाया था जब कि उन्होंने कहा कि एक्जीक्यूटिव डिस्क्रीटिज्म बढ़ रहा है । उस ईश्यू पर जब मैं आऊंगा तो मैं आपकी बात का जवाब दूंगा । आज जो कुछ हो रहा है मैं उस सब के साथ सहमत नहीं हूं । मैंने आपकी पार्टी के खिलाफ, जिस तरह से हमारी पार्टी का बिहेवियर रहा है उसकी भी मैंने क्वेश्चन किया है ।

It is a different thing that at that time Mr. Gurupadaswamy used to be on this side. This is a different issue altogether. But I have referred to all those things and I have expressed personally what I feel. After all, it i_s a riscarch paper and I have got to discuss.

श्री चतुरानन मिश्र : इतने साहस के लिये धन्यवाद । पूरा साहस कीजिए, यही प्रार्थना है ।

SHRI P. SHIV SHANKER: But the point is that it is a research paper that I am presenting and I am also saying certain things against the Executive—I have not read the whole paper—because I have said that the Executive is answerable to the people also. They are also answerable. How are they answerable? They have got to go to the people every five years and that is how they are answerable.

SHRI NIRMAL CHATTERJEE (West Bengal): When you say it is a research paper, it means you are in search of turih. While you are in search of truth, you are taking one position and while you are in the Government, you are taking another position!

SHRI P. SHIV SHANKER; Mr. Chatterjee, I would like to tell you one thing.,. *(Interruptions)*... Just one minute.

SHRI P. SHIV SHANKER; The point is this: I am sure that no two minds can think

श्री चतुरानन मिश्र : बूथ कैप्चरिंग को भी इस ऐंटी सोशल में जोड़ देना चाहिए ।

alike on every issue. It is the collective wisdom. It happens in our internal discussions. Every friend °f mine speaks whatever he feels. But once the Government takes a decision, there is a modicum of discipline that has to be followed which we follow, which you also follow and which I also follow. That is precisely why I wanted to say that once a decision i_s taken, I am bound by it. But as long as the decision is not taken, I express whatever I feel is correct. How do vou know what I express?

SHRI NIRMAL CHATTERJEE; You see. the charges that you are levelling against the Supreme Court are there because of our laws. That is the basic issue.

SHRI P. SHIV SHANKER; The point is this. Now, it is the question of accountability that I am discussing and it is my mind which is reflected in my views. One may agree or one may not agree with

my views. That is a different thing. But am I not, as a citizen of this country, '-; ditled to have my views? It is in that context only that I am saying this. Therefore, when I am saying that it is this class of people, that is, the anti-social elements, —I am putting it from the litigants" point of view and I am not trying to bring down the Court and the Court has always appreciated fair criticism—I am only putting it to you how this type of people take advantage. And, you see, there are cases after cases, a catena of cases, and some of the cases I have already pointed out and therefore, I would call these people as a horde of reactionaries. I have expressed myself and after I read out this, I will say whatever I have to say. Now, I *am* coming to the later portions;

> "The important question now to be asked is whether the Supreme Court is accountable to anyone. What is its constituency? We draw blank in this behalf. Though its constituency is the injustice-ridden masses of India it is such dumb and mute cless that it has failed to assert its right against the judiciary to account to it ..... "

Then, of course, I have gone on and said:

> "The Constitution is dependent on the wisdom of those who will be manning the higher judiciary... "—I am going into the future after the 1973 period—"... and the question is whether this faith found to be properly placed. I wouid leave it to you to seek and find out. I cannot but express that by and large it has been status-conscious and alway$_s$ leaned in favour of the haves. "

> "In a very analytical and revealing article, one American Professor... "

I would not like to cite that; Then I said;

> "The failure of agrarian reforms legislation, labour laws and socially beneficient legislation at the hands of the judiciary without its being called upon to account, shows that the constitutional mechanism is found imperfect in this behalf.
>
> 'It has been argued that, under written Constitution with division of powers between th$_e$ Union and the States, an independent body like the judiciary is a *sine qua non* for keeping every constitutional functionary within the limits of its powers. It is also said by Mr. Baki that the Indian Supreme Court is a centre of political power even though it is vulnerable, it is not shown to be accountable. It has been generally stated that the Supreme Court in accountable to the litigants, the Bar, the Legislature, the executive and to legal scholars, and, of late, rhe fourth estate, all *ot* whom exert pressure from time to time upon the Court. Are these in a position to insist up on the Court rendering account to them?"
>
> Then I will come to the question which has been raised by Mr. Aruna Aladi. I then said;
>
> "It was in the wake of the freedom that Pandit Jawaharlal Nehru was so infuriated that, in no uncertain terms, he gave vent to his feelings when he said;
>
> 'No Supreme Court and no judiciary can stand in judgement over the sovereign will of Parliament representing the will of the entire community... No individual can override ultimately the rights of the community at large... "
>
> "Where do we stand? Why did the trouble arise? The basic question asked is that... "

This is where I have put it. It was also referred to by some hon. Members. And I would like that each and every word may kindly be properly looked into. I said:

> "The basic question asked i$_s$ that, if the Supreme Court i$_s$ not accountable to enyone, should the appointing authority look at the philosophy of the judges before appointing them? That the Supreme Court is not accountable *is* clear from the fact that the judgments are not at all delivered ranging from three months to years. Even when the Judges are to retire, they do

[Shri P. Shiv Shankiu.)

not deliver judgments, with the result that the matters have to be heard over again. is the Government not entitled to lake into account the total dedication of those to he appointed as Judges to the constitutional philosophy enshrined in that Great document. I concede that it should not be from the party point of view but from the point of view of Interpretatioaal task of their understanding and appreciation of the Constitution. "

Therefore, my submission is that the panacea that he was asking for is provided in the last paragraph. But (hen I concede, and I would stress, that you cannot appoint a person to the highest judicial post on your own party philosophy. It is absolutely wrong. But then there should be total dedication to the constitutional philosophy. It is this which I am stressing. I would like to tell you that the hon. Judges take oath only in the name of the Constitution. Now, the point is this which I think I should make out. This is the particular expression which has been objected to. I was trying to say that! from the point of view of litigants if the word 'relief were there, nobody would have found fault with it. The question that I would like to ask is; Where am I wrong?—I have particularly applied my mind to that— one could perhaps say; Could you not have watered down the language, or could not have at least reduced the stress or the emphasis? I must frankly[1] tell you that there are two things which have weighed in my mind. One matter which weighed in my mind was that I was speaking of the accountability of this institution to the common man. If the common man was unhappy on the question of accountability, how would he have reacted? I am sure he would have reacted in a much more stronger way than what I have put. I took into consideration his feelings. After all this is a case where you are discussing in a seminar.

SHRI N1RMAL CHATrERJEE; On the one hand, it is a research paper. On the •other hand, you are appealing to the common people.

SHRI P. SHIV SHANKER; No, no. I have not been properly understood. In the research paper, I am now saying that the accountability should be to the common man. I have traced the history. When the common man is totally despaired, how would he have expressed himself? I took into consideration his, feelings for the purpose of using the language. How do you find fault with me? If I were not to do that, I would have been a hypocrite. *{Interruptions)*

SHRI B. SATYANARAYAN REDDY (Andhra Pradesh); The laws should be for the benefit of the common man.

SHRI P. SHIV SHANKER; That is an issue which is not disputed. I am: not disputing that. Certainly, who will find fault with it? But I would like to tell you that it is not as though I am saying it for the first time. Many people have expressed it in their own way. Even the sitting Judges of the Supreme Court have say it in much stronger terms. I have got the speeches. Therefore, where do you find fault with me? There are only two alternatives. Either you don't like my face or you don't like the party I belong to. *(Interruptions)*

SHRI ATAL BIHARI VAJPAYEE: You are the Law Minister.

SHRI P. SHIV SHANKER; Does it mean that I have no right of expression?

SHRI ATAL BIHARI VAJPAYEE: Your right is not denied. If one is a Law Minister, he has to observe rest raint.

SHRI P. SHIV SHANKER; What is your case? I would like to understand so that there are some norms. Do you mean that a Law Minister, when he speaks, must only praise the judiciary and he should not have a critical appraisal of it? Should he indulge in a critical appraisal or not? I would like to ask a question.

SHRI ATAL BIHARI VAJPAYEE: Mr. Shiv Shanker, your speech has created a reeling in the public mind that you want a committed judiciary. Would you like to create that impression?

SHRI P. SHIV SHANKER; Vajpayee Ji, if you are saying about committed

judiciary, 1 say "Yes, committed to the Constitution".

SHRr ATAL BIHARI VAJPAYEE: Committed to the ruling party. Committed to the Government.

SHRI P. SHIV SHANKER; I have read it to you. If you are having this impression, it is a wholly wrong impression. I have said that it should not be from the party point of view. What more do- you want? Commitment to Constitution. Yes. I have always been saying ihat.

SHRI ATAL BIHARI VAJPAYEE: Is it your contention that at the moment judiciary is not committed to the Constitution?

SHRI P. SHIV SHANKER^ Vajpayee Ji, the point is this. I am tracing the whole history and at a particular stage I have come to the conclusions. I am taking it right from the pre-Independence era. What should be the philosophy? I have spoken about it in the document itself. I have referred to the facts. It is after that that I am coming to this conclusion. Don't forget that. I am. tracing the whole history of it. That does not necessarily mean that you are criticising this court or you are bringing down this court. I would like to tell you one thing. This court is not that fragile or that brittle. 1 would like to tell you very plainly that in a democracy and in a democracy like ours, two institutions have to be preserved. If you think that even a fair criticism should not be allowed and the Law Minister should not utter a word, I will start my *maun vrat* from tomorrow. 1 should not say anything.

THE DEPUTY CHAIRMAN: I think now the Minister has made it amply clear. He has said that he never wanted to say that the judiciary should be committed to the ruling party. That was not his intention. Therefore, let us not indulge in all this controversy.

श्री अटल बिहारी वाजपेयी : आप हमारे साथ ज्यादती कर रहे हैं । अभी तक आपके साथ ज्यादती हुई होगी, ऐसी शिकायत है । आप बोलिए, खूब बोलिए ।

SHRI ALADI ARUNA alias V. ARUNACHALAM: Let him enlighten the House as to how the Supreme Court has violated the Constitution because we welcome the view of the hon. Minister....

THE DEPUTY CHAIRMAN: He has read out all the speech. *{Interruptions)* please sit down.

SHRI V. GOPALSAMY (Tamil Nadu): You can go to the other subject now.

PROF. C LAKSHMANNA; I re quest the Minister to yield _____

THE DEPUTY CHAIRMAN: Don't enter into another controversy here.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: Members may be allowed to put questions later.

PROF. C. LAKSHMANNA (Andhra Pradesh): I request the Minister to yield for one minute.

THE DEPUTY CHAIRMAN: It is not a question and answer hour.

PROF. C. LAKSHMANNA: Madam, while he was pleading the case, he came to a particular point and said that by one vote majority the Supreme Court came to a particular conclusion. Now, in that particular case, the Kesavanand Bharati case, the Supreme Court also come to the conclusion on the basis of one vote majority only that there is something like the basic structure of the Constitution ana, therefore, as far as the basic structure is concerned it cannot be affected, it cannot be tampered with, and it cannot b« looked into. If that is the case, if the Judges felt even by one vote majority that there is a basic structure of the Constitution and that it I has to be upheld, is it the conclusions on the part of the Minister that upholding such a view is also against

[Prof. C. Lakshmanna.]

the Constitution or does it go against the spirit of the Constitution? If he says yes, then a host of things follow. If he says no, that the Judges even by one vote majority or by several votes majority had come to a conclusion that there is a basic structure, then another host of things follow. Therefore, I would like the Minister to clarify 'this.

SHRI P. SHIV SHANKER: Madam, my friend has brought in another issue. I would like to> say this much that as long as the Kesavanand Bha-rati judgment remains, we are bound by the basic structure concept. Now, it is a question of views; I have my own view. I do not accept the concept of basic structure, speaking for myself, because wherefrom do you bring the basic structure? Suppose I put it this way, suppose after DO years the Kesavanand Bharati ease remains and suppose the people feel that the injustices are such that the •whole parliamentary system of Government must be changed into a different form of Government, if the sovereign thinks so, and if you do not have the cushions in the very amending power, then a revolution takes place. It is a matter which has got to be...

SHRI CHATURANAN MISHRA: It is a hypothetical case. In the very same Constitution we are having, can you do that....

SHRI P. SHIV SHANKER: Mishraji, as I said.. *(Interruptions)*

THE DEPUTY CHAIRMAN: Now you are engaging yourseli into a debate. : •.,

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: It is an intellectual debate.

PROF. C. LAKSHMANNA: People have every right to change the Constitution. Tomorrow we may think in terms of another Constitution which may be altogether different. I am not questioning it. But so long as the Constitution as it has been upheld by a particular judgment stands, there is no....

SHRI P. SHIV SHANKER: I have said 'so long as the judgment in the Kesavanand Bharati case remains. ' You see what has happened? The Golaknath case said in 1967 that you cannot amend the Fundamental Rights. That was over-ruled by the Kesavanand Bharati ease in 1973. They said that the judgment of the Supreme Court is wrong. Speaking for myself, it is possible, and it is my very earnest, hope, that the Supreme Court might consider it after 20 years or 25 years and they might say that it does not suit this generation, that the Kesavanand Bharati case is wrong. But till then I have to accept the Kesavanand Bharati case judgment as final. Everyone of us is bound by it. This is precisely what I tried to say. Now the point that I wanted to say.. •-•

SHRI V. GOPALSAMY: You go to the next subject.

SHRI P. SHIV SHANKER: You have made it a contentious issue and you do not allow me to speak out my mind.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: Not like that. We are being enlightened by you.

SHRI P. SHIV SHANKER: The point is this, and I would like to say this much that it is because of constructive criticisms that have come from within and without, I must say, that when we started the legal aid scheme in 1980, the Court has moved towards the poor people. And today the Court is taking up the public interest litigation which means it has moved, and from one end it has started moving. And I would like them to move more towards the poorer people. This is precisely my anxiety. And it is...

SHRI CHATURANAN MISHRA: First you move, ana then they will move.

SHRI P. SHIV SHANKER: Mishrar ji, according to you we are bad, we are worse. I ami prepared to accept it. But you see the speech part where you are finding fault with me. It is not what I have said about the executive. I have criticised my party. I have read it out to you. I have not left it out. If I feel something that Privy Purses should not have been granted, this is my view. As L said, it is a research paper where a debate has to take place. The executive is a different issue, which I am not dealing with for the present. I am on the question of accountability of judiciary to the poorer masses. For example, yesterday some of the hon. Members raised the question, What is it that you are doing, why is it that backward classes people, scheduled caste people are not appointed, why women are not appointed? This question was raised and it is in that context that I have to explain. It is slowly moving and it will move, I am confident of it. And, I can tell you one thing that if you misinterpret it to say that I ami denigrating, you are not right. On the contrary, some, of the hon. Members have denigrated and I have said it yesterday and pointed out how they have tried to denigrate the judiciary. In fact, it is my very clear concept that the institution of judiciary and the institution (of press have got to live. It is true that they might act against us. In fact, the press day in, and day out criticises me. In spite of that I am of the view that if these two institutions are destroyed, democracy will be destroyed in this country. They have got to be preserved for Whatever it is, even if it is not palatable to -me or us. It is possible that they write against me, to a very great extent wholly on unfounded facts, but that much of leeway has got to be given to them. That is a discretion which they should exercise, is my view. Even if they report Wrongly, it is to their conscience which they must answer. Therefore, these are the two Institutions which we must preserve and which we must fight for. And it is precisely that I was trying to do. I was trying to make out that this couft must have a leaning towards this large segment of the society which is in a majority, which I call as a dumb and mute class, which has not been able "to assert itself. It is precisely this theory which I was developing.

Now, the other part of it which i would like to tell you is this, that 1 havts found, in fact there has been a tremendous tolerance in the Court in recent days. While I would not like •to go into this because this is not the forum for me to say, but the court has been realising how the people's dissatisfaction in it has emerged at the level of criticism against the court. It is not as though our court is that fragile or that britfle, or that it is a holy cow, and you should not touch, as some hon. Members seemed to be thinking. It is not correct. According to me there should be a fair criticism and we should say what we feel. And you merely like to attack me, I would like to tell you that it is not fair to me to say that because Shiv Shanker belonging to the Congress Party has said this, there fore you would like to find fault with. Do you know one of the persons from your own ranks, who had been attack ing Supreme Court as a cassino and not as cathedral? I am prepared to say many things. Nobody raised the voice to this. None of you raised voice. A man who holds such an important position, who has taken advantage of the situation, if he ac cuses direct], upreme Court, what does it show? Did I do that? Therefore, I thought that I should exr plain and explain in the proper pers pective. I ami myself a product of this institution. I would like to very frankly say, and since somebody had raised this issue yesterday, I would like to tell him straigTie that I have s+arted my career from nothing. 1 have neither the family to boast of nor the caste to boast of, nor the status to boast of. I started from nothing and it is this institution which has enabled me to grow and if I ami here today to a great extent

[Shri P. Shiv Shanker. J

it is this instituion which has helped me. I would never like that this •institution should be affected in any form. But I should have a right to criticise where I feel strongly. 1 want more judges of backward classes, scheduled castes and women and so on so that.....

श्री राम अवधेश सिंह : लेकिन कौन करता है, करते नहीं हैं ।

SHRI P. SHIV SHANKER:.. this institution gets strengthened every body, even the minorities, everybody has a share in this democracy. It was a fair criticism made in the proper form, that I indulged in. why should these people find fault with me? It was said yesterday, very peculiarly, as to when did I start speaking for a jommon man. I have not betrayed my class; the other man has betrayed his class. I thought, I should explain these things so that it is put in a proper perspective. Therefore, do not think it merely because that a man from Congress Party has said this, there fore, it is wrong. That is why I said, persons who can find fault with me on two counts: either somebody does not like my colour, or does not like my party to which I belong. It is because my colour was also debat ed in the press some time back, which I am proud of----------

SHRI V. QOPALSAMY: Cleopatra was black and beautiful.

SHRI P. SHIV SHANKER: Majority of the people bear by colour. Nobody is white. It is only the black or the brown.

1 would like to say one thing more, about the very unfair remark which was made. Generally saying anything is different but attributing motives is something which is very reprehensible: You want to say something and get off. An hon. Mem-mer on the other side was making a direct attack on me saying that I was influencing judges on their judg ment. It is very shameful .....

SHHI ALADt ARUNA *alias* V. ARUNACHALAM: You have wrongly understood. I did not say _____

SHRI P. SHIV SHANKER; Not you; Mr. Upendra said that and he talks of tne high pedestal of judiciary. Is he not denegrating judiciary? Is It fair that without even quoting one instance, you say all this? you.. can stand up and say Mr. Shiv Shanker has committed a theft. But I would not like to utilise this forum, which is a privileged forum, if I have to say anything. I will say it outside. And so what 1 had to say, I said, and that is why I am explaining the situation.

1 have already explained as to why there had been delays in appointments. I need not again tra< verse that area. Some hon. Members referred about subordinate judiciary. It is true that subordinate judiciary is a matter which is within the realm of the State Governments. But I take note of it and I will certainly convey the feelings of the hon. Members to the States Sn a different forum, by writing a letter to them so that I would like to take- all the Chief Ministers into confidence.

One hon. Member was pleased to raise the point as to why this change now and why did I not remember it earlier at the time of salaries, when salaries were changed. I would bring it to the notice of the hon. Members that salaries is a matter of Constitutional amendment. This is with reference to law. But I am not taking shelter under it. I take this criticism, a fair criticism. But you must take into consideration the fact that this law was amended in 1986 also. Probably, the hon. Member wanted us to take all these things together, and I take this criticism in the spirit in which it was made that we should

collectively go into all the problems and sort them out. That point is well taken.

Some hon. Members said that transferred judges—Chief Justices—are in the hands of the Centre and, therefore, transfer policy should be given up. I must say that it is not a correct statement of fact because, perhaps, the hon. Member was very much perturbed over what happened in his State. I can tell you that as I explained yesterday, and I would like to repeat, the difficulties, in my view, are arising because we are not completely implementing the transfer policy. I take the blame on myself. I would not like to blame anyone else. I have my reasons but I would not like to disclose. When I am saying this before the House, I would like that the responsibility should oe thrown entirely at my door, ...

SHRI NIRMAL CHATTERJEE: That is the criticism. When it can not be done in a full manner_____*(Interruptions)* you do it selectively.

SHRI P. SHTV SHANKER: I will answer my friend from the CPI(M). He raised the issue that on the one side we satisfy them and on the other we hold the threat of transfer. This is what he said. He was referring to the Chief Justice of the Calcutta, High Court. T would like to tell him this much. I have already narrated how the transfer policy is beneficial. I would not like to go into it. What happens is that the Chief Justice talks to the judges. He tries to persuade them. Te ask$_s$ them "if not to this station, would you agree to go to that 'station?'. We give them sometime. It takes a little time though, of course, article 222 does not take into considera tion the question of corisent. Under article 222, consent is nojt necessary. If one were to function ^{T}ui an autocratic manner on the basis ojf the mere letter of the law, the Centra[1], 'Government can simply consult andt say that such and such a person shcjaL bte sent to such and such a plan But that would be a very autocratic and dictatorial way. That w why request the Chief Justice to talk *to* the judges when we consult him. I must compliment him. He has been trying to persuade the judges. I would lik$_e$ to say that Justice Chitatosh Mukherjee has been posted at Bombay not by way of punishment. He asked whether it would be a punishment. He was told that this was only to effect the transfer policy. Then he himself 'said 'Yes; I would like to go to Bombay; I would like to preside over the destiny of the Bombay High Court*. I would not have gone this far. But I-am taking you into confi dence because, after all, you are the people's representatives and I have to take you into confidence to a certain extent. I take my hat off to that gentleman be cause he is helping in the implement;;: of this policy which. I am convinced, if fully implemented, will enhance the prestige of the courts. It will enhance the prestige of the High Courts to a very great extent. I have said previously, In 1981. It is a matter of record. I had pointed out how the matters were going on. I have said it very openly. I would not again like to open the Pandora's Box.

SHRI NIRMAL CHATTERJEE. - You deny the -statement.... *(Interruption!,)* that because he was trying to introduce the regional language he was transferred. *(Interruptions').*

SHRT P. SHIV SHANKER; It is not correct, not at all. In fact I would like to tell you that this was never in consideration. I have not talked to him myself. I never knew him. I would like to say this plainly. I have never seen the face of the Chief Justice. It was the Chief Justice of India who talked to him and told me that he agreed to go to Bombay. He asked the question whether it was a punishment. It was explained to him that this only meant giving effect to the transfer policy. He willingly said T will go'. He himself suggested that it should be 2nd November. That is why when I issued the order I put it as 2nd November. He himself wanted to go. I am telling you plainly. It was on 2nd November he went. I would not like to go into the other details. It is possible —one hon. Member said this—that O[10]

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fShri P. Shiv Shanker] Chief Justice in that State and the Executive might not have gone on well. But that cannot be the reason for the policy being wrong. What has been happening is that a lot of complaints have come. Complaints have been coming. My hon. friend should not mind if I say this. Complaints have been coming before and these have been taken into consi-1. 00 P. M. deration, as 1 said, as far back as in 1957, Mr. Setalvad heading the Law Commission where even Palkhiwala was the member and they said transfer policy must be implemented. Otherwise what was happening? 1 did not like 'X' community, but they are brilliant people at the Bar, I have been appointing them at the age of 56, 57 or 58 so that the man withers away within no time and if he is a man who I like. I will appoint him at the early age of 41 or 42 so that he is the Chief Justice and he perpetuates my line. These things had been happening. This has been debated many a time in and outside this House since 1981, 1982. But I would submit that if it is implemented completely it will subserve the cause and enhance the prestige.

I would draw attention of the House to one aspect. One hon. Member has said that it is a case of an executive despotism where he i. s_s concerned. I woo'd not like to dilate too much on this but if the executive has misbehaved, the sovereign has always taken care, please do not forget, whether it is the State or the Oentre. It is the people before whom you have to go every five years. Every one of us goes and; ays what we are doing. You go to your State, I go to my State and say what we ar_e doing. The public opinion is formed and the people take care of it, people had been taking car_e of it. This is a healthy growth in the democracy which has taken place. I am sorry to hear one hon. Member saying that there is a progressive erosion of independence of judiciary. I am not prepared to accept this. Many a vested interest always think that if a court decides against the Government, only then there is the independence of in liciary. That is not a correct approach. Judicial independence is that in "> given case i they must decide whatever they think to be correct. It is not that they are influenc-I ed either by the Government or by the [lawyers about whom some hon. Member was saying sometime back. Uninfluenced by any factor, according to their own light, they must decide the case. This is the judicial independence and I would like to say that there is no erosion on this aspect.

One hon. Member was referring about my having created a class structure. The class structure exists in this country, whe ther we accept it or not. There is one more aspect. *(Interruptions).* Eevery question cannot be answered like this.

श्री राम अवधेश सिंह : मेरे सवाल का जवाब आपने नहीं दिया।

श्री पी० शिवशंकर : आपके सवाल का जवाब तो बहुत दे दिया। क्या सवाल था आपका? . . . **(व्यवधान)**

श्री राम अवधेश सिंह : सब से पहले तो मैं आपको बधाई देना चाहता हूं कि जिस. . .

श्री पी० शिवशंकर : वह छोड़ दीजिए बधाई-बधाई की बात —पहले मुझे बोलने दीजिए।

श्री राम अवधेश सिंह : . . . बहा-दुराना ढंग से स्पष्ट ढंग से आपने अपना विचार व्यक्त किया लेकिन मेरे सवाल का जवाब निगुण ढंग से दिया। मेरा जो सवाल था, वह सगुण सवाल था उसका जवाब आपको सगुण देना था। . . . **(व्यवधान)**

उपसभापति : आपस में मत बोलिये।

श्री राम अवधेश सिंह: मैं पूछ रहा हूं और वह यील्ड किये हुए हैं। हमने कहा था कि पिछड़े वर्गों के अभी बारह हाई कोर्ट के जज देश भर में हैं केवल बारह, चार हरिजन और आदिवासी एक है माइनारटी तो दस-बारह हैं वह भी हैं।

तो मैं यह कह ा चाहता हूं कि क्या उनको आप अब की बार जो 90 जगह खाली हो रही हैं जो उनको भरना है उसमें कम से कम 60 पिछड़े वर्ग, हरिजन

आदिवासी, माइनारटी को देंगे — यह ठोस बात है ?

दूसरी बात यह है कि जो जज शराबी हैं और पीकर सड़क पर घूमता है और हमारे इधर के साथियों ने कहा कि पूरी आजादी जज की होनी चाहिए, मैं आपके साथ सहमत हूं पर ऐसा जज जो शराब पीकर सड़क पर घूमता है उसके खिलाफ भी कार्यवाही करने के लिए इस विधायिका को पावर होनी चाहिए और किसी को हो या न हो, इम्पीचमेंट की जो पावर है कि जज को इम्पीच कर सकती है संसद उसको थोड़ा सा कीजिए कि हमारे

SHRI V. GOPALSAMY; He is casting asperisions on judges.

श्री राम अवधेश सिंह : क्या बात कर रहे हैं ?

We have the right to impeach the jud-fes.

हम चाहते हैं कि इस राइट का इस तरह से प्रयोग हो, ऐसी मशीनरी एवाल्व हो जो जज घूस लेते हैं उसके लिए यह ला मिनिस्ट्री क्या कोई ऐसी मशीनरी इजाद करेगी जो कि जज लोगों के आचरण पर भी दृष्टि रखेगी और उसकी सूचना सदन को देगी ? तीसरी बात है कि जो 13 जजों की पटना हाई कोर्ट में वेकेंसीज हैं और मुख्य न्यायाधीश की कुर्सी खाली है क्या उस पर जल्दी बहाली करेंगे और जब यह बहाली करेंगे तो 13 तो अभी खाली हैं और दो सीटें जनवरी में खाली होनी वालीं हैं कुल 15 हैं तो उनमें से कम से कम 10 पिछड़ी जातियों, हरिजन न्यायाधीशों को देंगे या नहीं ?

EPUTY CHAIRMAN: One minute. Let us hear Mr. Deshmukh also.

SHRI SHANKARRAO NARAYAN-RAO DESHMUKH (Maharashtra): It is a very small matter, Madam. The hon. Minister has just now stated that he will write to the States regarding subordinate judiciary, j would like to seek one clarification. Having realised that subordinate judiciary is not properly looked after, I would like to know whether the correspondence will be in the nature of a letter or in the nature of guidelines.

SHRI P. SHIV SHANKER: I can only persuade the Chief Ministers. I cannot do beyond that. Speaking for myself, I can only write the feelings of the House on the subject.

So far as the point made by the hon. Member is concerned, I have already said it but I would like to say again that I will continue to persuade the hon'ble Chief Justice$_s$ to recommend the people from these classes, i have mentioned the classes earlier. I cannot go beyond that. It is true that so have the power—I do not deny that—I can write a name and supposing whatever he says can appoint, that! would be a clear case of confrontation. We would like to persuade. This is what I have said. I will keep your observations in my mind. I would not like to go beyond that. It is true that various sections do not have sufficient representation in different High Courts. I am prepared to concede that. But if you say that I am all in all and therefore could do it. that is not possible for me.

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श्री राम अवधेश सिंह : अगर कोई चीफ जस्टिस और गवर्नर आपकी पालिसी नहीं फालो करे तो क्या अपनी पालिसी को न फेलकर उसके खिलाफ कार्यवाही करेंगे ?

श्री पी० शिवशंकर : आपके पटना हाई कोर्ट में मैंने खुद 1980 में बैकवर्ड को एप्वायंट करवाया था। आपको याद है ?

श्री राम अवधेश सिंह : लेकिन इस बार क्या करेंगे । आप इस बार कुछ करिए ?

श्री पी० शिवशंकर : करेंगे कुछ करेंगे और हमारी तरफ से कोशिश रहेगी

श्री राम अवधेश सिंह : हम लोगों को चिंता है क्योंकि पटना हाई कोर्ट में सारे ब्राह्मण, राजपूत आदि ही भरे हुए हैं। . . . (व्यवधान) वहां पर वे राजनीति करते हैं और जज लोग खुले सड़क पर राजनीति करते हैं।

श्री पी० शिवशंकर : भाई मैं आपसे हाथ जोड़कर निवेदन करता हूं कि मैं अपनी तरफ से पूरी कोशिश करूंगा।

There is one aspect which I would like to touch and ileave the matter there. This is a very important matter which has been raised by the hon. Member sitting on the other side—this is about the appointment of the Judges to the Commissions after retirement. It is a very significant point that he has raised.

SHRi SATYA PRAKASH MALA-VIYA; And also about the sitting Judges,

SHRI P. SHIV SHANKER: No, no, after retirement. That ig what Mr. Gurupadaswamy said and I am trying to answer his question. It is a very significant point according to me. I am sure he did not have any particular thing in his mind when he made that observations and he made it generally. Why I am saying this is that this has been going on, because a lot of work has got to be taken care of—be it in Karnataka where his party is ruling, be it at the Centre or at the other places where the different State Governmests are there—and retired Judges are drafted. I am prepared to discuss with the hon. Members if we can find a way out what should be done in the case of certain work of the Commissions etc., how we should deal with that. This is a matter which has to be gone into. Speaking for myself, I entirely agree with Mr. Gurupadaswamy. But it is not my decision. I have got to discuss with my colleagues. I am prepared to discuss with hon. Members on this issue. It is a very serious question raised and I appreciate the spirit behind the question that has been raised. That could be looked into. I would not like to go further. I would only request....

SHRI V. GOPALSAMY: Could you yield to me for a minute? I raised a pertinent point about giving retrospective effect to HRA.

SHRI P. SHIV SHANKER: Madam, what happens is, *i* can't answer each and every question. However, the honourable Member has raised two issues. One is "with reference to the amount of Rs. 2, 500/-. He says, why don't you make it retrospective? It is too late for me at this stage, because I can't redraft the law retrospectively. But I will consider what best could be done. About the phone calls, I take the suggestion of the honourable Member, it is very pertinent because he said, it differs from State to State, why not you bring in uniformity? That I will take up with the authorities concerned, for the purpose of sorting it out,

SHRI V. GOPALSAMY; I made another point.

SHRI P. SHIV SHANKER: Thank you, Madam.

THE DEPUTY CHAIRMAN: Now I will put the amendment of Shri Satya Prakash Malaviya for reference of the Bill to a Select Committee of the Rajya Sabha.

The *amendment was negatived*

THE DEPUTY CHAIRMAN: I shall now put the motion to vote. The question is;

> "That the Bill further to amend the High Court Judges (Conditions of Service) Act, 1954, as passed by the Lok Sabha, be taken into consideration. "

The motion, was adopted.

THE DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clause 2 *was added to the Bill.*

Clause 1, *the Enacting Formula and the Title were added to the Bill.*

SHRi P. SHIV SHANKER: Madam, I beg to move:

"That[1] the Bill be returned. "

श्री सत्य प्रकाश मालवीय : माननीय उपसभापति जी मैंने कल इस ओर ध्यान आकर्षित किया था कि इलाहाबाद उच्च-न्यायालय में पिछले मई महीने में... (व्यवधान)...

उपसभापति : यह कहां आता है आपका सवाल ?

श्री सत्य प्रकाश मालवीय : नहीं इसमें आता है। मेरा निवेदन है कि... (व्यवधान)...

उपसभापति : आप तो बोल चुके हैं।

श्री सत्य प्रकाश मालवीय : माननीय, मई से लेकर दिसम्बर हो गया, वहां स्थाई मुख्य न्यायाधीश की नियुक्ति नहीं। इस ओर मैं आपका ध्यान आकर्षित करना चाहता हूं कि कम से कम वहां स्थाई रूप से मुख्य-न्याय धीश होना चाहिए और यह जो वहां अस्थाई मुख्य-न्यायाधीश की परम्परा है इसको बिल्कुल खत्म करना चाहिए।... (व्यवधान)

THE DEPUTY CHAIRMAN: The question is:

"That the Bill be returned."

The motion was adopted.

श्री सत्य प्रकाश मालवीय : माननीय उपसभापति जी, मेरा व्यवस्था का प्रश्न है।

उपसभापति : आपका तो सारा हो गया न ?

श्री सत्य प्रकाश मालवीय : कुछ नहीं हुआ थर्ड रीडिंग में। थर्ड रीडिंग में मुझको फिर बोलने का अधिकार है।

उपसभापति : फर्स्ट रीडिंग में आपने जो मुद्दे उठा लिए हैं, वे नहीं। अगर कोई नया मुद्दा हो तो उठा सकते हैं।

श्री सत्य प्रकाश मालवीय : यह हमारा अधिकार है। आप उससे हमें कैसे वंचित कर सकती हैं।

उपसभापति : आपने अपना अधिकार तो पहले यूज कर लिया।

श्री सत्य प्रकाश मालवीय : मेडम, थर्ड रीडिंग में नहीं किया। मैंने एक चीज की ओर ध्यान आकर्षित किया था जिसका मंत्री जी ने जवाब नहीं दिया। जो कि बहुत महत्वपूर्ण विषय है। किसी भी सर्वोच्च न्यायालय में या उच्च-न्यायालय में एक दिन के लिए मुख्य-न्यायाधीश को अस्थाई नियुक्ति की जाय और वह पांच-छह महीने तक अस्थाई चलता रहे नियुक्ति, इस पर मैंने आपका ध्यान आकर्षित किया था।

उपसभापति : आप जवाब देना चाहते हैं मिनिस्टर साहब ?

श्री अरविन्द गणेश कुलकर्णी (महाराष्ट्र): मेडम, बिल तो पास हो गया है।

THE DEPUTY CHAIRMAN: It will be a very bad precedent. Honourable Minister, he wants to seek some clarifications.

... *(Interruptions)*

SHRI SATYA PRAKASH MALAVIYA: I pointed out yesterday that ?ast May, in the Allahabad High Court, against the permanent vacancy of Chief Justice a particular gentle man was appointed only for a day or two. Thereafter, since May 1987—we are now in December 1987—th$_e$ va cancy still remains. Therefore, that vacancy has to be filled up. *(Inter ruptions).....*

PROF. C. LAKSHMANNA; Madam, ... *(Interruptions)*

THE DEPUTY CHAIRMAN: You cannot go on like this. You should know the procedure—j am very sorry.

PROF. C. LAKSHMANNA; I have my name.... *(Interruptions)*..

THE DEPUTY CHAIRMAN: x have no name here.. '.. *(Interruptions)* I do not have any name, with me.

SHRj P. *SMV* SHANKER; As I have yesterday itself explained, there are cases where some persons were appointed Chief Justices for one or two days, I explained that. I also told you that in Delhi I had to agree for appointment of a particular Chief Justice for five days because somebody alse was appointed for a day.

I would like to tell you about the appointment of the Chief Justice of the Allahabad High Court that the matter is under consideration in consultation with the Chief Justice of India. I would like to further tell you that after the consultations we would take some decisions. The matter is stili under consultations.

SHRI SATYA PRAKASH MALAVlYA: Will you *get it* expedited?

SHRI P. SHIV SHANKER; I will do mv best.

श्री राम अवधेश सिंह : क्या आप भी ऐसी कम्युनिटी बनाने की बात सोच रहे हैं ?...(व्यवधान)..

THE HOSPITALS AND OTHER INSTITUTIONS (SETLEMENT OF DISPUTES) BILL, 1982

THE MINISTER OF STATE OF THE MINISTRY OF LABOUR (SHRI P. A. SANGMA); Madam, I beg to J«iove for leave to withdraw the Hospitals and Other Institutions (Settlement of Disputes) Bill, 1982.

Th$_e$ question was put, and the motion ivas adopted.

SHRI P. A. SANGMA: Madam, I withdraw the Bill.

SHRi RAM AWADHESH SINGH: (Bihar).

THE DEPUTY CHAIRMAN: You are not going on record.

श्री राम अवधेश सिंह : उप-सभापित महोदया, मैं हमेशा आपकी आज्ञा मानता हूं।

उपसभापति : आपको अच्छे ढंग से बोल रहे हैं तो आप समझने को तैयार नहीं हैं। कितनी बार आपको बोलने का मौका दिया है ? फिर भी आप बोले जा रहे हैं।

THE HOSPITALS AND OTHER INSTITUTIONS (REDRESSAL OF GRIEVANCES OF EMPLOYEES) BILL, 1987

THE MINISTER OF STATE OF THE MINISTRY OF LABOUR (SHRI P. A. SANGMA); Madam, I beg to move for leave to introduce a Bill to provide for the redressal of grievances of employees in hospitals and certain other institutions and for matters connected therewith or incidental thereto.

The Question was proposed.

Not recorded.